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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,958	04/15/2005	Herbert Kurzinger	12742.105USWO	2999
23552	7590	10/30/2008	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			SAYALA, CHHAYA D	
		ART UNIT	PAPER NUMBER	
		1794		
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		10/30/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/509,958	KURZINGER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	C. SAYALA	1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 7/11/2008.

2a) This action is **FINAL**.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102/Claim Rejections - 35 USC § 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 8-10, 12-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB 1351878 alone or optionally in view of JP 57-43220 and Zeller (US Patent 4696634).

See the Figures, page 1, col. 2 and page 2, col. 1 and the claims. The feed bar contains zones that are softenable in water and other zones that are not, meeting claim 9. The limitation that the feed mixtures are extruded and rolled separately from each other is a process step and these are composition claims and it is well known that a product can be prepared by a different process. The patentability of a product does not depend on its method of production.

Alternatively, the process steps of extrusion and being rolled are shown by the JP patent and by the Zeller patent. The JP patent shows two types of feeds extruded and rolled to form feeds. See page 6. Zeller too discloses such a process of extruding and then using roller mills to prepare fish food. See claim 1 and col. 1, line 41.

While the primary reference does not teach the process of making their fish food, to incorporate such steps of extrusion and rolling would have been obvious as a method of preparing the product, based on the use of such a process already established by prior art, and this would have been obvious to the practitioner at the time the invention was made.

2. Claims 1, 3, 5-10, 12-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Axelrod (US Patent 5128153) alone or optionally in view of JP 57-43220 and Zeller (US Patent 4696634).

See col. 1, lines 53-65, col. 2, lines 25+, col. 3, lines 15-60, and the claims in Axelrod. The densities of the food varies in its layers as do the feed ingredients. The limitation that the feed mixtures are extruded and rolled separately from each other is a process step and these are composition claims and it is well known that a product can be prepared by a different process. The patentability of a product does not depend on its method of production.

Alternatively, the process steps of extrusion and being rolled are shown by the JP patent and by the Zeller patent. The JP patent shows two types of feeds extruded and rolled to form feeds. See page 6. Zeller too discloses such a process of extruding and then using roller mills to prepare fish food. See claim 1 and col. 1, line 41.

While the primary reference does not teach the process of making the fish food, to incorporate such steps of extrusion and rolling would have been obvious as a method of preparing the product, based on the use of such a process already established by prior art, and this would have been obvious to the practitioner at the time the invention was made.

3. Claims 1-2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bansal (US Patent 4542686)

The terminology “for aquatic animals” does not distinguish this claim since the patent teaches two different feed compositions with different content *and* different colors co-extruded so that they are merged into one feed unit and yet are distinguishable (marbled).

The limitation that the feed mixtures are extruded and rolled separately from each other is a process step and these are composition claims and it is well known that a product can be prepared by a different process. The patentability of a product does not depend on its method of production. The claims are being rejected under both statutes since these claims recite a process limitation in product claims, and the burden

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of showing that the product is different from that of the reference based on the instant claim limitations is being shifted to applicant.

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 3212406, alone or optionally in view of JP 57-43220 and Zeller (US Patent 4696634).

The terminology “for aquatic animals” does not distinguish this claim. since the patent teaches two different feed compositions with different content *and* different colors co-extruded so that they are merged into one feed unit and yet are distinguishable.

The DE patent shows laminates that have different compositions, colorings, etc.

The limitation that the feed mixtures are extruded and rolled separately from each other is a process step and these are composition claims and it is well known that a product can be prepared by a different process. The patentability of a product does not depend on its method of production.

Alternatively, the process steps of extrusion and being rolled are shown by the JP patent and by the Zeller patent. The JP patent shows two types of feeds extruded and rolled to form feeds. See page 6. Zeller too discloses such a process of extruding and then using roller mills to prepare fish food. See claim 1 and col. 1, line 41.

While the primary reference also teaches fish food, to incorporate such steps of extrusion and rolling would have been obvious as a method of preparing the product, based on the use of their process that includes rollers, and this would have been

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obvious to the practitioner at the time the invention was made. Note that the fish food has a layer of colorants, nutrients, etc. that is separate from the other ingredients of the feed.

5. Claims 1-6, 11-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Geromini et al. (US Patent 5695797).

Col. 1, line 44 to col. 2, line 26 and abstract disclose an outer layer with proteinaceous materials such as meat or fish and an inner filling that has oil, co-extruded. The oily filling contains materials such as yeast, sugar, milk powder, vitamins and minerals. The product can be of two colors and of any shape.

The limitation that the feed mixtures are extruded and rolled separately from each other is a process step and these are composition claims and it is well known that a product can be prepared by a different process. The patentability of a product does not depend on its method of production. The claims are being rejected under both statutes since these claims recite a process limitation in product claims, and the burden of showing that the product is different from that of the reference based on the instant claim limitations is being shifted to applicant. The terminology "for aquatic animals" does not distinguish these claims since they are drawn to a product and the 'use' terminology does not patentably distinguish an otherwise old and known composition.

***Claim Rejections - 35 USC § 103***

6. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1351878, Axelrod and DE 3212406 in view of JP 57-43220 and Rossen et al. (US Patent 3851084) taken with Nonaka et al. (US Patent 4757948).

The GB patent teaches a food bar for fish that has different layered sections, each section or layer containing a different type of feed. See col. 1 on page 2. See Fig. 2. The layers are also said to have different textures, one being hard and others, soft. While the various layers are arranged in repeated layer section to form multilayers that are compressed together, the patent does not teach the method of making such layers. Note that at page 1, lines 80-85, the patent points to the embodiment of instant claim 10. Similarly, Axelrod teaches pellets used to feed fish that have different layers of various densities so that the pellets initially float and loosen some food from the outer layers before sinking further and loosening more food mid-level for fish that inhabit that level of water and then sinking to the bottom where the remaining food from the innermost layer of the pellet is released. See col. 2 and col. 3. Col. 3, lines 45+ show that the surface layer is provided with lard and gas-releasing capabilities. This addresses instant claims such as claims 3, 5, 10 and 13. Again, the patent does not teach making the layers or the pellet. DE '406 discloses a fish feed which is in the form of layers wherein the layers of various colors, auxiliaries, nutrients or active compounds are applied as different layers and are compressed together. The patent does not teach extruding the layers although compressing them using pressure rollers is shown.

JP '220 teaches a feed "in the form of plates" as feed for marine animals, that is made by extrusion and then flattened by a flattening press. See page 4, last paragraph and page 5, first paragraph. Page 6, second paragraph describes the process in detail wherein the raw material mixture is extruded and then the pellets are flattened to the desired thickness by using rotating rollers.

Rossen et al. teach a method of producing laminated food products wherein a plurality of dissimilar homogeneous doughs are coextruded. The patent states at col. 1, lines 20+ that the snack product is prepared by laminating layers of differing doughs to produce the resulting laminate, and the patent goes on to state that: "It has been proposed that the individual layers may have different flavors, may have different textures, may be formed of substantially different materials, or may be different colors." The patent shows that the doughs could have different viscosities also. Further at col. 10, lines 13-16, the patent teaches that the dissimilar doughs are then extruded and further processed such as being flaked with flaking rolls (see also col. 3, lines 27-28 and claims 1 and 2). Nonaka et al. is being used here, only to show that the flaking roll is used in roller mills (see Example 2, specifically at lines 34-35). Therefore, it would have been obvious to use extrusion and roller mills to make the laminates or feed pellets of the prior art references, namely the GB, the Axelrod and DE patents, which do not teach how to make their products but do teach that their product has dissimilar ingredients. With regard to claim 4, while the primary patents teach fat ingredients, it would have been obvious to one of ordinary skill in the art at the time the invention was made that lipophilic substances such as fat-soluble vitamins are generally a part of fish feed. With

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regard to claim 7, Axelrod renders obvious the concept that varying density varies with the differences in layers having varying food ingredients, while the arrangement of the fish feed components being at various levels of the pellet itself and fat being on the surface layer suggests that it would have been obvious to change this and have the protein on the surface and the fat on the inside, this being a matter of choice depending on whether the Axelrod product is required to float or sink and to the *degree* that the pellet should float or sink.

### ***Response to Arguments***

Applicant's arguments filed 7/11/08 have been fully considered but they are not persuasive.

The references applied, i.e. the GB patent, the DE patent or Axelrod, or Bansal or Geromini have all been criticized because they do not teach that the product was "rolled". However, these claims, except for claim 14, are all drawn to product claims and "rolled" is a process limitation. Therefore, the traversal at page 4 of the response, specifically at the third full paragraph is not agreed with. With respect to the Bansal patent, the fact that it discloses pet food with the appearance of 'marbled meat' does not detract from the fact that the patent therefore, teaches a product with various dissimilarly colored ingredients that are arranged in a spaced relationship that gives a marbled appearance, (see the instant specification at page 4, last paragraph). The same argument that "rolled" is a process limitation and the claims rejected are product claims, holds good here too.

With respect to the Bansal patent, applicant also states at page 5, that the “white pet food is completely enveloped by the red pet food and not peripheral to the red pet food” is not an arrangement of the present claims wherein the feed mixtures are only in contact at only a minimal area. However, the claim states that the “contiguous zones that merge into each other” which of course, the patent does show by its disclosure. The same argument that “rolled” is a process limitation and the claims rejected are product claims, holds good here too.

With respect to Geromini et al. the patent shows co-extruding a meat with a filling paste and producing a product with dissimilar ingredients that form contiguous zones that merge into each other. This is not excluded by the claims. Note that the terms “aquatic animals” in the claims are considered “use terminology” in product claims. The fact that “rolling” would rupture the “casing”, i.e. the meat layer, is unsubstantiated and there is no evidence that this would result.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/  
Primary Examiner, Art Unit 1794**

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